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WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

CHARLES CARD,
Plaintiff

CIVIL ACTION 1:10-CV-01195
SECTION "P"

VERSUS

JUDGE DEE D. DRELL

JOE KEFFER, et al.,
Defendants
KIRK

MAGISTRATE JUDGE JAMES D.

J U D G M E N T

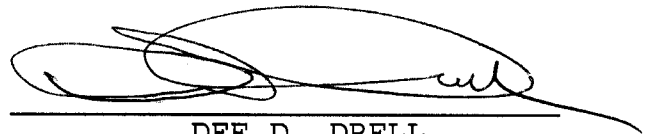
For the reasons contained in the Report and Recommendation of the Magistrate Judge previously filed herein, and after independent (de novo) review of the record including the objections filed herein, and having determined that the findings and recommendation are correct under the applicable law;

IT IS ORDERED that defendants' motion for summary judgment be GRANTED IN PART in favor of Smith and Bacon.

In so ruling, we also note that, factually, this case is different from *Oviedo V. Hallbauer*, ___F.3d ___, 2011 WL 4011361 (5th Cir. 2011). *Oviedo* was an ordinary removal to federal court after certification by the Attorney General. The present case originated in federal court. The recharacterization of the suit as to Bacon and Smith was not incorrect. They remain defendants in this action under the Federal Tort Claims Act. However, automatic substitution of the United States is pretermitted at this time pending receipt and further consideration of a supplemental report and recommendation regarding the remaining

defendants. Counsel for the Government is, meanwhile, invited to read footnote 9 of the *Hui* opinion digested in the report and recommendation.

THUS ORDERED AND SIGNED in Chambers at Alexandria, Louisiana, on this 11th day of October, 2011.

A handwritten signature in black ink, appearing to read "Dee D. Drell", written over a horizontal line.

DEE D. DRELL
UNITED STATES DISTRICT JUDGE